



Todd F. Silbergeld
Director
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8888
Fax 202 408-4806

September 22, 1997

EX PARTE PRESENTATION

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: *In the Matters of American Communications Services, Inc.'s Petition for Declaratory Ruling Regarding Preemption of the Arkansas Telecommunications Regulatory Reform Act of 1997 and MCI Telecommunications Corporation's Petition for Expedited Declaratory Ruling Regarding Preemption of the Arkansas Telecommunications Regulatory Reform Act of 1997, CC Docket No. 97-100*

Dear Mr. Caton:

Pursuant to a request of Common Carrier Bureau staff members, I enclose photocopies of two publicly available documents: (1) Arkansas Public Service Commission Order No. 9, In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Sec. 252(b) of the Telecommunications Act of 1996, Docket No. 96-395-U (dated June 11, 1997) and (2) the proposed interconnection agreement filed jointly with the Arkansas Commission by AT&T Communications of the Southwest, Inc. and Southwestern Bell Telephone Company (dated July 25, 1997).

In accordance with the Commission's rules, an original and two copies of this letter and the enclosures are submitted herewith. Should you have any questions concerning the foregoing, do not hesitate to contact me.

Very truly yours,

Enclosures

cc: Ms. Newman
Mr. Starr

No. of Copies rec'd
List A B C D E

02

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton, Acting Secretary
F.C.C.
1919 M St., NW, Room 222
Washington, D.C. 20554

Roundtrip - Return to M. Bloodworth

Original + 2

ARKANSAS
PUBLIC SERVICE COMMISSION

JUN 11 4 08 PM '97

FILED

IN THE MATTER OF AT&T COMMUNICATIONS)	
OF THE SOUTHWEST, INC.'S PETITION FOR)	DOCKET NO. 96-395-U
ARBITRATION OF UNRESOLVED ISSUES WITH)	ORDER NO. <u>9</u>
SOUTHWESTERN BELL TELEPHONE COMPANY)	
PURSUANT TO SEC. 252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

ORDER

Order No. 5, entered by the assigned Administrative Law Judge on February 28, 1997, directed AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT) to file an Interconnection Agreement in compliance with the arbitration award within forty-five days of the date of a final Commission Order approving Order No. 5. Order No. 6, entered by the Commission on March 11, 1997, affirmed Order No. 5. On April 18, 1997, Order No. 8 was entered extending the deadline for filing the Interconnection Agreement. AT&T and SWBT were granted an extension to May 23, 1997, to file a single agreement between the two parties incorporating the arbitration award.

On May 23, 1997, AT&T and SWBT each filed separate Interconnection Agreements. To date, AT&T and SWBT have not complied with Order No. 5 and No. 8 which directed the parties to file a single agreement. Therefore, the Commission finds that AT&T and SWBT are not in compliance with the Orders of the Commission and that the separate "agreements" filed by AT&T and SWBT on May 23, 1997, should be and hereby are dismissed. Pursuant to Ark. Code Ann. §23-1-103, failure to comply with a Commission Order may result in the imposition of

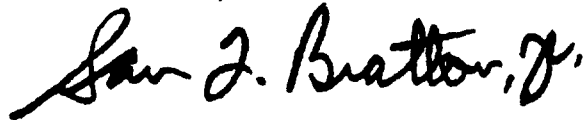
monetary sanctions. The Commission will not at this time impose sanctions on SWBT and AT&T. However, continued failure to comply with the orders of the Commission in this Docket may result in sanctions.

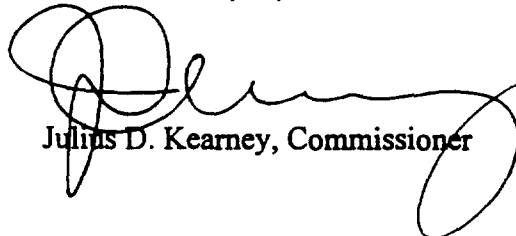
The parties to this Docket are hereby directed to file a single interconnection agreement on or before 2:00 p.m. on June 30, 1997. The Commission will not consider that an agreement subject to review pursuant to §252(e)(2)(B) of the Telecommunications Act of 1996, 47 U.S.C. §252(e)(2)(B), has been filed until AT&T and SWBT have filed a joint Interconnection Agreement in compliance with the arbitration award.


BY ORDER OF THE COMMISSION.

This 11th day of June, 1997.


Lavenski R. Smith, Chairman


Sam I. Bratton, Jr., Commissioner


Julius D. Kearney, Commissioner


Jan Sanders
Secretary of the Commission

JUL 25 12 55 PM '97

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

FILED
IN THE MATTER OF AT&T COMMUNICATIONS)
OF THE SOUTHWEST, INC.'S PETITION FOR)
ARBITRATION OF UNRESOLVED ISSUES WITH) DOCKET NO. 96-395-U
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO § 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S AND
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
PROPOSED COMPLIANCE INTERCONNECTION AGREEMENT**

Comes now Southwestern Bell Telephone Company ("SWBT") and AT&T Communications of the Southwest, Inc. ("AT&T") with their proposed Compliance Interconnection Agreement pursuant to Order No. 9 and state as follows:

1. On June 11, 1997, the Arkansas Public Service Commission ("Commission") issued Order No. 9 which dismissed the separate interconnection agreements filed by SWBT and AT&T on May 23, 1997. In Order No. 9, the Commission directed SWBT and AT&T to file a "single interconnection agreement."

2. The proposed Compliance Interconnection Agreement ("Agreement") is attached to this pleading. Part A includes arbitrated issues and contractual language that both parties were able to agree upon. Part B is a matrix which includes a description of arbitrated issues to which the parties differ as to the correct interpretation of the Commission order resolving these issues, together with competing contractual language and rationale from each party. Part C is a matrix which includes a description of issues that AT&T believes the Commission resolved in the

arbitration proceeding. SWBT contends that the issues in Part C were not arbitrated and there is no basis for inclusion of such issues as they are outside the scope of this Docket. AT&T contends that the issues in Part C were arbitrated and describes the proposed contract language and rationale for deciding the issues in AT&T's portion of Part C.

3. SWBT and AT&T believe the attached Agreement filing complies with Order No. 9. If the Commission needs additional information, both parties are willing to provide such information to ensure that the Agreement complies with Order No. 9.


WHEREFORE, SWBT and AT&T request the Commission to approve their respective positions on the issues presented herein, and to adopt the prevailing party's contractual language that implements the Commission's final decision on such issues.

Respectfully submitted,

Garry S. Wann
Timothy Pickering
SOUTHWESTERN BELL TELEPHONE COMPANY
P. O. Box 1611
1111 W. Capitol - Room 1005
Little Rock, Arkansas 72203
(501) 373-5676


By 
Attorneys for Southwestern Bell
Telephone Company

WRIGHT, LINDSEY & JENNINGS
200 West Capitol Avenue, Suite 2200
Little Rock, Arkansas 72201-3699
(501) 371-0808
FAX: (501) 376-9442

By 
M. M. Norton (74114)
J. Mark Davis (79276)
Attorneys for AT&T Communications
of the Southwest, Inc.

CERTIFICATE OF SERVICE

This is to certify that I have this 25th day of July, 1997,
served all parties in the foregoing matter with a copy of the
foregoing document by depositing in the U.S. Mail a copy properly
addressed, with adequate postage thereon.



K:JCL6748.101
5755-37603
72497/1454

INTERCONNECTION AGREEMENT-ARKANSAS

between

Southwestern Bell Telephone Company

and

AT&T Communications of the Southwest, Inc.

PART A

TABLE OF CONTENTS
INTERCONNECTION AGREEMENT-ARKANSAS
BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY
AND
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.

1.	<u>Introduction</u>	1
2.	<u>Effective Date</u>	2
3.	<u>Intervening Law</u>	2
4.	<u>Term of Agreement</u>	2
5.	<u>Assignment</u>	3
6.	<u>Confidentiality and Proprietary Information</u>	3
7.	<u>Liability and Indemnification</u>	5
8.	<u>Payment of Rates and Charges</u>	8
9.	<u>Dispute Resolution</u>	9
10.	<u>Termination of Service to AT&T</u>	11
11.	<u>Notices</u>	13
12.	<u>Taxes</u>	14
13.	<u>Force Majeure</u>	15
14.	<u>Publicity</u>	16
15.	<u>Network Maintenance and Management</u>	16
16.	<u>Law Enforcement and Civil Process</u>	16
17.	<u>Changes in Subscriber Carrier Selection</u>	17
18.	<u>Amendments or Waivers</u>	18
19.	<u>Authority</u>	18
20.	<u>Binding Effect</u>	18
21.	<u>Consent</u>	18
22.	<u>Expenses</u>	18
23.	<u>Headings</u>	18
24.	<u>Relationship of Parties</u>	19
25.	<u>Conflict of Interest</u>	19
26.	<u>Multiple Counterparts</u>	19
27.	<u>Third Party Beneficiaries</u>	19
28.	<u>Regulatory Approval</u>	19
29.	<u>Trademarks and Trade Names</u>	19
30.	<u>Regulatory Authority</u>	20
31.	<u>Verification Reviews</u>	20
32.	<u>Complete Terms</u>	22
33.	<u>Cooperation on Preventing End User Fraud</u>	22
34.	<u>Notice of Network Changes</u>	22
35.	<u>Good Faith Performance</u>	23
36.	<u>Responsibility of Each Party</u>	23
37.	<u>Transmission of Traffic to Third Parties</u>	23

38.	<u>Governmental Compliance</u>	23
39.	<u>Responsibility for Environmental Contamination</u>	24
40.	<u>Subcontracting</u>	24
41.	<u>Referenced Documents</u>	24
42.	<u>Severability</u>	25
43.	<u>Survival of Obligations</u>	25
44.	<u>Governing Law</u>	25
45.	<u>Performance Criteria</u>	25
46.	<u>Other Obligations of AT&T</u>	26
47.	<u>Dialing Parity; Local Number Portability</u>	26
48.	<u>Branding</u>	26
49.	<u>Customer Inquiries</u>	26
50.	<u>Disclaimer of Warranties</u>	26
51.	<u>No Waiver</u>	27
52.	<u>Definitions</u>	27
53.	<u>Resale</u>	27
54.	<u>Unbundled Network Elements</u>	27
55.	<u>Ordering and Provisioning, Maintenance, Connectivity Billing and Reordering, and Provision of Customer Usage Data</u>	28
56.	<u>Network Interconnection Architecture</u>	28
57.	<u>Compensation for Delivery of Traffic</u>	28
58.	<u>Ancillary Functions</u>	28
59.	<u>Other Requirement and Attachments</u>	28

ATTACHMENTS

Resale

Attachment 1: Resale

Appendix Services/Pricing

Exhibit A: SWBT's Telecommunications Services Available for Resale

Exhibit B: SWBT's Other Services Available for Resale

Appendix Customized Routing-Resale

Appendix DA-Resale

Appendix OS-Resale

Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

Attachment 4: Connectivity Billing-Resale

Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

Appendix Pricing-UNE

Appendix Pricing-UNE Schedule of Prices

Attachment 7: Ordering and Provisioning-UNE

Attachment 8: Maintenance-UNE

Attachment 9: Billing-Other

Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture

Appendix Interconnection Trunking Requirement (ITR)

Appendix Network Interconnection Methods (NIM)

Appendix SS7 Interconnection

Attachment 12: Compensation

Appendix Cellular

Appendix FGA

Ancillary Functions

Attachment 13: Ancillary Functions

Appendix Collocation

Appendix Poles, Conduit, ROW

Other Requirements

Attachment 14: Interim Number Portability

Attachment 15: E911

Attachment 16: Network Security and Law Enforcement

Attachment 17: Failure to Meet Performance Criteria

Attachment 18: Mutual Exchange of Directory Listing Information

Attachment 19: White Pages-Other (WP-O)

Attachment 20: Clearinghouse

Attachment 21: Numbering

Attachment 22: DA-Facilities Based

Attachment 23: OS-Facilities Based

Attachment 24: Recording-Facilities Based

INTERCONNECTION AGREEMENT - ARKANSAS

This Interconnection Agreement - Arkansas (Agreement) is between AT&T Communications of the Southwest Inc. a Delaware Corporation, having an office at 5501 LBJ Freeway, Dallas, Texas 75240, and Southwestern Bell Telephone Company (SWBT), a Missouri corporation, having an office at 1010 Pine Street, St. Louis, Missouri 63101, (collectively the Parties).

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SWBT services and for the provision by SWBT of Interconnection, unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement AT&T and SWBT hereby agree as follows:

1.0 INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SWBT agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) unbundled Network Elements, or combinations of such Network Elements (Combinations), (c) Ancillary Functions and (d) Interconnection to AT&T. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to SWBT's network and reciprocal compensation for the transport and termination of telecommunications.
- 1.2 The Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected in any lawful manner to other Network Elements, Combinations or Resale services provided by SWBT or to any network components provided by AT&T itself or by any other vendor. Subject to the requirements of this Agreement, AT&T may at any time add, delete, relocate or modify the Resale services, Network Elements or Combinations purchased hereunder.
- 1.3 During the term of this Agreement, SWBT will not discontinue, as to AT&T, any Network Element, Combination, or Ancillary Functions offered to AT&T hereunder. During the term of this Agreement, SWBT will not discontinue any Resale services or features offered to AT&T hereunder except as provided in Attachment 1: Resale hereto and subject to the provisions of Section 30.2 of the General Terms and Conditions of this Agreement. This Section is not intended to impair SWBT's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Network Elements, Combinations, or Ancillary

Functions made by SWBT to AT&T as set forth in and during the term of this Agreement.

- 1.4 SWBT may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed in Section 60 of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas.

2.0 Effective Date

- 2.1 This Agreement becomes effective (1) when executed by each Party and approved by the State Commission; or (2) by operation of law pursuant to the Order of the State Commission, whichever is earlier.

3.0 Intervening Law

3.1

- 3.2 In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party will promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties will expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement within sixty (60) days after such notice, either Party may invoke the Dispute Resolution process set forth in Section 9.4.2 of this Agreement.

4.0 Term of Agreement

- 4.1 This Agreement will become effective as of the Effective Date stated above, and will expire after a three (3) year initial term plus two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items

desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.

- 4.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the State Commission for arbitration. Should the State Commission decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 4.3 Upon termination of this Agreement, AT&T's liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by AT&T to prevent service interruption, but not to exceed one (1) year. The Network Elements, Combinations, Ancillary Functions and Resale services provided hereunder are vital to AT&T and must be continued without interruption. When AT&T provides or retains another vendor to provide such comparable Network Elements, Combinations, Ancillary Functions or Resale services, SWBT and AT&T agree to co-operate in an orderly and efficient transition to AT&T or another vendor. SWBT and AT&T further agree to coordinate the orderly transition to AT&T or another vendor such that the level and quality of the Network Elements, Combinations, Ancillary Functions and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

5.0 Assignment

- 5.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SWBT may assign its rights and delegate its benefits and delegate its duties and obligations under this Agreement without the consent of AT&T to a 100 per cent owned affiliate of SWBT, provided the performance of any such assignee is guaranteed by the assignor. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.
- 5.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

6.0 Confidentiality and Proprietary Information.

- 6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All

information which is disclosed by one party to the other in connection with this Agreement, during negotiations (also see the Confidentiality Agreement between the Parties dated April 1, 1996) and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Resale Services, Network Elements or Combinations placed by AT&T pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of AT&T's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and Recorded Usage Data as described in Attachments 5 and 10 concerning Recorded Usage Data, whether disclosed by AT&T to SWBT or otherwise acquired by SWBT in the course of the performance of this Agreement, will be deemed Confidential Information of AT&T for all purposes under this Agreement.

- 6.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.
- 6.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.5 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this

Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.

- 6.6 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.7 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 6.8 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.9 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

7.0 Liability and Indemnification

7.1 Limitation of Liabilities

- 7.1.1 The Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in Sections 7.3.1 and 7.3.3, following, and other than for willful or intentional misconduct, will not exceed the total of any amounts due and owing to AT&T pursuant to Section 45 (Performance Criteria) and the Attachment referenced in that Section, plus the amounts charged to AT&T by SWBT under this Agreement for the affected service or business practice during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year

commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.

7.1.2

- 7.1.3 Each Party will, to the greatest extent permitted by applicable law, include in its local switched service tariffs or contracts a limitation of liability that relates to the Resale services, Network Elements, Ancillary Functions or Combinations provided under this Agreement (i) that covers the other Party to the same extent the first Party covers itself and (ii) that limits the amount of damages a customer may recover to the amount the applicable customer was or would have been charged for the service that gave rise to the loss during the period of such loss.

7.2 **No Consequential Damages**

- 7.2.1 NEITHER AT&T NOR SWBT WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTIES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SWBT'S OR AT&T'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT; (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SWBT OR AT&T'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 **Obligation to Indemnify**

- 7.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnatee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses

incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors.

7.3.1.1

7.3.2

7.3.3 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party for actual infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the actions of the respective Parties, or failure to act, as required pursuant to this Agreement.

7.3.4 SWBT makes no warranties, express or implied, concerning AT&T's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with AT&T's rights to interconnect with SWBT's network and to Unbundled Network Elements and/or combine SWBT's network elements (including combining with AT&T's Network Elements) such interconnection or unbundling and/or combining of Elements (including combining with components of AT&T's network) in SWBT's network. Section 7 applies solely to this Agreement. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to AT&T's intellectual property or contract rights.

7.3.5

7.4 **Obligation to Defend; Notice; Cooperation**

7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will

not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnatee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnatee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnatee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnatee, and the relevant Indemnatee will have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnatee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnatee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnatee and also will be entitled to employ separate counsel for such defense at such Indemnatee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnatee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

7.5 OSHA Statement

- 7.5.1 AT&T, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to AT&T's activities concerning Collocated Space, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result solely of AT&T's failure to comply with any of the foregoing. SWBT, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold AT&T harmless for any judgments, citations, fines or other penalties which are assessed against AT&T as a result solely of SWBT's failure to comply with any of the foregoing.

8.0 Payment of Rates and Charges

- 8.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of

receipt of an invoice. Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the six (6) month Commercial Paper Rate applicable on the first business day of each calendar year.

9.0 Dispute Resolution

9.1 Finality of Disputes

- 9.1.1 Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

9.2 Alternative to Litigation

- 9.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

9.3 Informal Resolution of Disputes

- 9.3.1 In the case of any dispute and at the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. Unless otherwise provided herein, or upon the Parties' agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than sixty (60) days after the date of the letter initiating dispute resolution under this paragraph.

9.4 Billing Disputes

- 9.4.1 The Parties agree that all unresolved billing disputes which involve amounts which represent one (1) percent or less of the amounts charged to AT&T by SWBT under this Agreement during the Contract Year in which the dispute arises will be submitted to binding arbitration pursuant to the provisions of Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.
- 9.4.2 The Parties agree that if they are unable to resolve billing disputes which involve amounts which represent more than one (1) percent of the amounts charged to AT&T by SWBT under this Agreement during the Contract Year in which the dispute arises, then either party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration pursuant to Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.
- 9.4.3 The Parties agree that all bills, including bills disputed in whole or in part, are to be paid when due, that interest applies to all overdue invoices as set forth in Section 8.1 to this Agreement, and that no other late payment fee or charge applies to overdue invoices. The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive, by crediting or otherwise, interest applied to the disputed amount as set forth in Section 8.1.
- 9.4.4 To the extent that any other portions of this Agreement provide for a bill closure process between the parties, or if such a process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of this Section.
- 9.4.5 Each Party agrees to notify the other Party of a billing dispute and may invoke the informal dispute resolution process described in Section 9.3. The parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, or, if the charges have been subject to the bill closure process described in Section 9.4.4, above, within sixty (60) calendar days of the closure of the billing period covered by such bill closure process.

9.5 Other Disputes

- 9.5.1 **Dispute Resolution Procedure (DPR) 1** - Except as otherwise specifically set forth in the Agreement, the Parties agree that for all other disputes which arise under this Agreement, the dispute will be submitted to binding arbitration under Section 9.6 of this Agreement if the matter which is in dispute represents one (1) percent or less of the amounts charged to AT&T by SWBT under this Agreement during the Contract Year in which the matter which is disputed arises, whether measured by the disputing Party in

terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.

9.5.2 **Dispute Resolution Procedure (DRP) 2** - Except as otherwise specifically set forth in the Agreement, for all other disputes involving matters which represent more than one (1) percent of the amounts charged to AT&T by SWBT under this Agreement during the Contract Year in which the dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided that upon mutual agreement of the Parties, the dispute may be submitted to binding arbitration under Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.

9.5.3

9.5.4 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

9.6 **Arbitration**

9.6.1 Disputes subject to binding arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will alternate between Dallas, Texas, and St. Louis, Missouri. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

10.0 **Termination of Service to AT&T**

10.1 Failure of AT&T to pay charges may be grounds for termination of this Agreement. If AT&T fails to pay when due, any and all charges billed to them under this Agreement,

(Unpaid Charges), and any portion of such charges remain unpaid more than fifteen (15) calendar days after the due date of such Unpaid Charges, SWBT will notify AT&T in writing that in order to avoid having service disconnected, AT&T must remit all Unpaid Charges, whether disputed or undisputed, to SWBT within fifteen (15) calendar days after receipt of said notice. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 9 of this Agreement.

- 10.2 If any AT&T charges remain unpaid at the conclusion of the time period as set forth in Section 10.1 above (30 calendar days from the due date of such unpaid charges), SWBT will notify AT&T, the appropriate commission(s) and the end user's IXC(s) of Record in writing, that unless all charges are paid within fifteen (15) calendar days, AT&T's service will be disconnected and AT&T's end users may be switched to SWBT local service. SWBT will also suspend order acceptance at this time.
- 10.3 If any AT&T charges remain unpaid or undisputed thirty (30) calendar days past the due date of the unpaid charges as described in Section 10.2 above, AT&T will, at its sole expense, notify its end users, the Commission and the end user's of Record that their service may be disconnected for AT&T failure to pay unpaid charges, and that its end users must select a new local service provider within fifteen (15) calendar days. The notice will also advise the end user that SWBT will assume the end user's account at the end of the fifteen (15) calendar day period should the end user fail to select a new local service provider.
- 10.4 If any AT&T charges remain unpaid or undisputed forty-five (45) calendar days past the due date, SWBT will disconnect AT&T and transfer all AT&T's end users who have not selected another local service provider directly to SWBT's service. These end users will receive the same services provided through AT&T at the time of service. These end users will receive the same services provided through AT&T at the time of transfer. SWBT will inform the Commission and the end user's IXC(s) of Record of the names of all end users transferred through this process. Applicable service establishment charges for switching end users from AT&T to SWBT will be assessed to AT&T.
- 10.5 Within five (5) calendar days of the transfer (50 calendar days past AT&T's due date), SWBT will notify all affected end users that because of AT&T's failure to pay, their service is now being provided by SWBT. SWBT will also notify the end user that they have thirty (30) calendar days to select a local service provider. If the end user does not select an LSP within 30 calendar days the customer will remain a SWBT local customer.
- 10.6 SWBT may discontinue service to AT&T upon failure to pay undisputed charges as provided in this section, and will have no liability to AT&T in the event of such disconnection.

10.7 After disconnect procedures have begun, SWBT will not accept service orders from AT&T until all unpaid charges are paid. SWBT will have the right to require a deposit equal to one month's charges (based on the highest previous month of service from SWBT) prior to resuming service to AT&T after disconnect for nonpayment.

10.8 Beyond the specifically set out limitations in this section, nothing herein will be interpreted to obligate SWBT to continue to provide service to any such end users or to limit any and all disconnection rights SWBT may have with regard to such end users.

11.0 Notices

11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

11.2 If to AT&T:

Vice President - Southwest Local Services Organization
AT&T
5501 LBJ Freeway, Suite 800
Dallas, Texas 75240
972-778-2215 (FAX); 972-778-2595 (voice contact)

11.3 If to SWBT:

Vice President -General Manager
(Special Markets)
Southwestern Bell Telephone Company
Room 4110
One Bell Center
St. Louis, Missouri 63101
314/235-2609 (FAX) ; 314/235-7483 (voice contact)

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

12.0 Taxes

- 12.1 With respect to any purchase of service under this Agreement, if any Federal, state or local government tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by applicable law, ordinance or tariff to be collected from a purchasing Party by the providing Party, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- 12.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity.
- 12.3 If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 12.4 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 12.2, will not collect such Tax during the effective period of the exemption. Such exemption will be effective upon receipt of the exemption certificate or affidavit in accordance with Section 12.7.
- 12.5 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless on an after-tax basis with respect to forbearing to collect such Tax.
- 12.6 With respect to any Tax or Tax controversy covered by this Section 12, the purchasing Party will be entitled to contest, pursuant to applicable law, and at its own expense, any Tax that it is ultimately obligated to pay. The purchasing Party will be entitled to the